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8                   **UNITED STATES DISTRICT COURT**  
9                   **SOUTHERN DISTRICT OF CALIFORNIA**

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11                   EDWARD KEITH GULBRANDSON,  
12                   CDCR #C-46985,

13                   Plaintiff,

14                   vs.  
15                   GOODYEAR TIRE & RUBBER Co.,

16                   Defendant.

17                   Civil No. 08-1143 LAB (NLS)

18                   **ORDER DISMISSING CIVIL  
19 ACTION WITHOUT PREJUDICE  
20 FOR FAILING TO PAY FILING FEE  
21 REQUIRED BY 28 U.S.C. § 1914(a)  
22 AND/OR FAILING TO MOVE TO  
23 PROCEED IN FORMA PAUPERIS  
24 PURSUANT TO 28 U.S.C. § 1915(a)**

25                   Plaintiff, an inmate currently incarcerated at Richard J. Donovan Correctional Facility in  
26 San Diego, California and proceeding pro se, has filed a “Civil Rights Complaint” alleging  
27 violations of his First, Sixth, Eighth and Fourteenth Amendment rights by the Goodyear Tire &  
28 Rubber Company. (Compl. at 2-3.)

29                   While Plaintiff’s Complaint is virtually incomprehensible, he appears to seek declaratory  
30 and injunctive relief, as well as actual damages and profits against Goodyear based on claims  
31 that the Company infringed upon his 1991 copyright and/or patent for a “directional  
32 asymmetrical tread, designed to prevent an automobile from hydroplaning.” (*Id.*)

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I.

## **Failure to Pay Filing Fee or Request IFP Status**

All parties instituting any civil action, suit or proceeding in a district court of the United States, except an application for writ of habeas corpus, must pay a filing fee of \$350. *See* 28 U.S.C. § 1914(a). An action may proceed despite a party's failure to pay this filing fee only if the party is granted leave to proceed *in forma pauperis* ("IFP") pursuant to 28 U.S.C. § 1915(a). *See Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999).

9       Here, Plaintiff has neither prepaid the \$350 filing fee required to commence a civil action,  
10 nor has submitted a Motion to Proceed IFP. Therefore, this case is subject to immediate  
11 dismissal pursuant to 28 U.S.C. § 1914(a).

III.

### **Conclusion and Order**

14 ||| For the reasons set forth above, the Court hereby:

15           (1)   **DISMISSES** this action sua sponte without prejudice for failing to pay the \$350  
16 filing fee or file a Motion to Proceed IFP pursuant to 28 U.S.C. §§ 1914(a) and 1915(a); and

17 (2) **GRANTS** Plaintiff **forty five (45)** days leave from the date this Order is "Filed"  
18 to: (a) prepay the entire \$350 civil filing fee in full; **or** (b) complete and file a Motion to proceed  
19 IFP which includes a certified copy of his trust account statement for the 6-month period  
20 preceding the filing of his Complaint pursuant to 28 U.S.C. § 1915(a)(2) and S.D. CAL. CIVLR

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<sup>1</sup> Plaintiff is cautioned that if he chooses to proceed further with this action by moving to proceed IFP, his Complaint, which appears patently frivolous, will be subject to the mandatory screening and *sua sponte* dismissal provisions of 28 U.S.C. § 1915(e)(2)(b). *See Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (*en banc*) (noting that 28 U.S.C. § 1915(e) “not only permits but requires” the court to *sua sponte* dismiss an *in forma pauperis* complaint that fails to state a claim). Moreover, such a dismissal may be counted as a “strike” against Plaintiff if he requests IFP status in any future civil action filed while he is incarcerated. *See Andrews*, 493 F.3d at 1052 (under the Prison Litigation Reform Act, “[p]risoners who have repeatedly brought unsuccessful suits may entirely be barred from IFP status under the three strikes rule[.]”).

1           **IT IS FURTHER ORDERED** that the Clerk of the Court shall provide Plaintiff with the  
2 Court's approved form "Motion and Declaration in Support of Motion to Proceed *In Forma*  
3 *Pauperis.*" If Plaintiff fails to either prepay the \$350 civil filing fee or complete and submit the  
4 enclosed Motion to Proceed IFP within that time, this action shall remain dismissed without  
5 prejudice and without further Order of the Court.

7 || DATED: July 1, 2008

Camp A. Bunn

**HONORABLE LARRY ALAN BURNS**  
United States District Judge